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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/468,496	12/21/1999	RON WAKSMAN M. D.	WELD-111-DIV	3711

7590 06/20/2002

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EXAMINER

DESANTO, MATTHEW F

ART UNIT PAPER NUMBER

3763

DATE MAILED: 06/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/468,496

Applicant(s)

WAKSMAN M. D. ET AL.

Examiner

Matthew F DeSanto

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 29-40 is/are pending in the application.
- 4a) Of the above claim(s) 36 and 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-35 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Election/Restrictions***

1. Claims 36 and 38-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.
2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Objections***

3. Claims 30-34 and 37 objected to because of the following informalities: claim 30 is dependent on itself, claim 30. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. Claim 31 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Referring to claim 31, the claim language is unclear and indefinite, because claim 31 states "the distal end of the second tube is coterminous with the distal end of the third tube," but claim 31 is dependent on claim 30, which states "the third tube extends beyond the distal ends of the first and second tube." Therefore, claim 31 is unclear and indefinite.

6. Claim 37 recites the limitation "outer tube" in claim 37, line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 29-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Nita (USPN 5267954). Nina discloses a catheter comprising, a first tube having a lumen closed at its distal end and sized to receive the treating element, a second tube in parallel relation to the first tube and having a lumen open at its distal end and sized to receive a guidewire, and a third tube for receiving first and second tube and having a fluid return lumen in fluid communication with the lumen of the first elongated tube.

Where the distal end of the third tube extends beyond the distal ends of the first and second tubes. Wherein the distal end of the second tube is coterminous with the

distal end of the third tube, both which extend beyond the distal end of the first tube. Wherein the lumen of the first tube has an inside diameter less than twice the outside diameter of the treating element. Wherein the first tube includes an internal barrier to block the passage of the treating element out of the first tube, and where the internal barrier has an aperture. (Figures 2, 6b, 10 and entire reference).

8. Claims 29, 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Yock (USPN 5501227). Yock discloses a catheter comprising, a first tube having a lumen closed at its distal end and sized to receive the treating element, a second tube in parallel relation to the first tube and having a lumen open at its distal end and sized to receive a guidewire, and a third tube for receiving first and second tube and having a fluid return lumen in fluid communication with the lumen of the first elongated tube, wherein the lumen of the first tube has an inside diameter less than twice the outside diameter of the treating element. (Figures 6B, and 7B, column 5, lines 49-67, and entire reference).

9. Claims 29-33, 35 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Ginn (USPN 5540236). Ginn discloses a catheter comprising, a first tube having a lumen closed at its distal end and sized to receive the treating element, a second tube in parallel relation to the first tube and having a lumen open at its distal end and sized to receive a guidewire, and a third tube for receiving first and second tube and having a fluid return lumen in fluid communication with the lumen of the first elongated tube.

Where the distal end of the third tube extends beyond the distal ends of the first and second tubes. Wherein the distal end of the second tube is coterminous with the distal end of the third tube, both which extend beyond the distal end of the first tube.

Wherein the lumen of the first tube has an inside diameter less than twice the outside diameter of the treating element. Wherein the first tube includes an internal barrier to block the passage of the treating element out of the first tube. Wherein the distal end tapers to a narrow and flexible atraumatic tip. (Figures 1,4,5,6,7, 8 and col. 4 lines 11-39, and entire reference).

10. Claims 29, 30, 35 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Weaver et al. (USPN 5843028). Weaver et al. discloses the catheter comprising, a first tube having a lumen closed at its distal end and sized to receive the treating element, a second tube in parallel relation to the first tube and having a lumen open at its distal end and sized to receive a guidewire, and a third tube for receiving first and second tube and having a fluid return lumen in fluid communication with the lumen of the first elongated tube, and where the distal end of the third tube extends beyond the distal ends of the first and second tubes. (Figures 6, 15, 13B, 23 and entire reference).

**Conclusion**

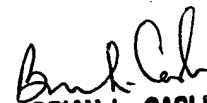
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 1-703-872-9302 for regular communications and 1-703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-0858.



Matthew DeSanto  
Art unit 3763  
June 17, 2002



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